

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MEDIOSTREAM, INC.,

Case No. C 11-2525 RS

Plaintiff,

v.

**ORDER RE MOTIONS AND TRIAL
SCHEDULING**

MICROSOFT CORPORATION, et al.,

Defendants.

As requested at the Case Management Conference held on February 7, 2013, the parties have submitted concise and useful statements outlining their respective proposals for scheduling motion practice and trial proceedings. After review of those statements and the pending severance motions, under all of the circumstances the interests of justice and efficient case management warrant the conclusion that the best use of the trial window available in June of this year is to proceed first with trial of plaintiff's claims against Apple. Accordingly, that trial will commence on June 24, 2013.

While Apple's market share may be comparatively small, and any findings as to infringement or non-infringement in the Apple operating system environment would not be dispositive of infringement issues in the PC environment, it appears likely that resolving the claims against Apple would have at least some benefit in the subsequent adjudication of the remaining

claims.¹ Additionally, the size and scope of a trial limited to Apple makes it particularly well-suited for disposition first, and within the extant scheduling constraints. Plaintiff's preferred alternative of proceeding initially against only Dell does not appear sufficiently feasible, given the role of software supplied by others in the infringement analysis. While a trial involving only Dell and Microsoft might address that concern, the better course is to proceed with Apple instead.

Further trial scheduling decisions will be deferred until after the trial against Apple is held. With the agreement of the parties, the motion of defendant Sonic Solutions, LLC for summary judgment (Docket No. 831) is hereby submitted for decision without oral argument, pursuant to Civil Local Rule 7-1(b). Sony's invalidity motion (Docket No. 734) will be heard on March 7, 2013 at 1:30 p.m. This order disposes of Apple's severance motion (Docket No. 725). For administrative purposes, all remaining non-discovery pending motions are denied, without prejudice. When and if it becomes appropriate to re-set any of them for hearing, the moving parties may simply file notices, without re-filing all of the briefing and supporting papers.

Microsoft and Apple suggest that it would be appropriate to permit the filing of an additional summary judgment motion on invalidity jointly on behalf of all defendants. The relationship of this proposed motion to the existing Sony motion is unclear, but given the page length limits requested, it seems likely defendants contemplate a motion that goes substantially beyond the arguments made by Sony. If in light of this order defendants still believe such an additional motion is necessary and can reasonably be heard and decided prior to the Apple trial, no later than February 21, 2013, they may submit one letter brief, not to exceed 3 pages, explaining how the motion would differ from the Sony motion, why they believe it should be heard, and a proposed briefing and hearing schedule. Plaintiffs may file a response no later than February 26, 2013.

¹ Some potential outcomes in the Apple trial would have substantially more effect on the remaining claims than others.

IT IS SO ORDERED.

Dated: 2/15/13



RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE

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